IN THE

Supreme Court of the United States

OCTOBER TERM 1948—No. 478

ROSCOE A. COFFMAN,
Petitioner,

vs.

FEDERAL LABORATORIES, INC.,
Respondent,

UNITED STATES OF AMERICA,
Intervenor.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

RESPONDENT'S BRIEF IN OPPOSITION.

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Preliminary Statement.

Petitioner's 1932 license agreement (24a)[1] contained provisions which assured him $5,000 annually either by way of royalties on the first 200 starters (25a), or combined royalties and salary (32a); otherwise petitioner could cancel the license at his option (32a).

Petitioner's proof showed respondent paid him $265,434.73 (Defendant's Appendix, 65a-68a) as follows:

1937	$ 5,000.00	
1938	9,861.79	
1939	4,767.16	
1940	6,394.44	
1941	21,528.82	
1942	112,956.06	
1943	44,416.00	
1944	50,000.00	
1937-1942	10,510.46	$265,434.73

This sum included all of the monies allowed petitioner under Royalty Adjustment Orders W-9 and N-7 (35a, 40a).

[1] The references are to the Plaintiff's Appendix unless otherwise noted.

Petitioner's claim of $677,829.30 (12a, 78a) here is in addition to the amounts paid as aforesaid. Petitioner's claim ignores the Royalty Adjustment Act (56 Stat. 1013, U. S. C. Title 35 Sections 89-96) and orders issued thereunder (35a, 40a).

Petitioner treats the Government's wartime manufacture or use of his patent pursuant to Section 6 of the Royalty Adjustment Act as though it were manufacture or use under his license agreement. For this use by the United States petitioner demands royalties at the contract rate.

All the use involved in this suit is use by the United States of America (117a-Finding 4). There was no dispute below that the manufactured articles would otherwise have been within the scope of the license agreement.

The large bulk of petitioner's claim, $609,927.84 (100a) arises after the effective date of the Royalty Adjustment Orders. The balance of $67,901.47 was for amounts accrued and unpaid prior to January 1, 1943 (99a), and was disputed except as to $1,749.26.

The trial court did not pass on the merits since all of it was for Government use and recovery was barred by the Royalty Adjustment Act.

The respondent, in spite of the immunity from suit given it by Section 1 of the Royalty Adjustment Act, has been subjected to great expense in defending itself from this protracted litigation[2] for which expense it is probably without any redress.

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[2] *Coffman* v. *Federal Laboratories, Inc.*, 323 U. S. 325, 65 S. Ct. 303;
Coffman v. *Federal Laboratories, Inc.*, 55 F. Supp. 501;
Coffman v. *Federal Laboratories, Inc.*, 73 F. Supp. 409;
Coffman v. *Federal Laboratories, Inc.*, F. 2d , CCA 3rd, November 9, 1948, No. 9549.

After a hearing accorded petitioner, the royalties provided in the license were adjudged unreasonable and excessive, Orders W-9 and N-7 (35a-40a). Petitioner offered no proof below to show either the reasonableness of the amounts provided in the license agreement, or the unreasonableness of the amount fixed in the orders for governmental wartime use.

Petitioner's claim against this respondent is barred by the statute. When proof of the operative facts (W-9, 35a; N-7, 40a) was made, the District Court was without jurisdiction to proceed further (R. A. A. Section 1).

Petitioner is not concluded by the amounts paid him under the Royalty Adjustment Orders, but if he is dissatisfied he must manifest his dissatisfaction by a suit against the Government in the Court of Claims for such additional sum as will give him fair and just compensation (Section 2). This respondent will not be a party to, nor will it have any interest in, that suit. It should be noted that petitioner makes no specific attack upon Section 1 which provides that he shall not have any remedy against respondent. Petitioner seeks to declare the entire statute invalid.

I.

The constitutional and other questions raised by the petitioner are too unsubstantial to require further argument.

In the Court of Appeals respondent conceded that the validity of the Royalty Adjustment Act under the Fifth Amendment was properly raised and that a decision of the constitutional question there was unavoidable. That court

after careful consideration affirmed the validity of the statute.[3] Our position here is that the constitutional and other questions now presented to this court are so unsubstantial as not to need further argument, and this court should exercise its discretion against the granting of a writ of certiorari.

A.

The Language of Section 2 of the Statute Cannot, As a Matter of Law, Limit the Court of Claims in its Ascertainment of Petitioner's Just Compensation under the Fifth Amendment.

Petitioner's claim of denial of just compensation is erected upon the premise that the language of Section 2 "taking into account the conditions of wartime production" is a limitation upon the power of the Court of Claims to grant petitioner the just compensation provided by the Fifth Amendment; therefore, he reasons, the statute is invalid and he should not have to go to the Court of Claims.

The major premise of this argument is an erroneous assumption of law. It has long been settled that Congress is without any authority to limit the just compensation provided in the Fifth Amendment. The matter of just compensation is *exclusively* a judicial function and courts ignore attempted legislative limitations. Such is the uniform course of decisions in this court and in the Court of Claims. *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 13 S. Ct. 622, 627, 37 L. Ed. 463; *United States* v. *New River Collieries Co.,* 262 U. S. 341, 43 S. Ct.

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[3] *Coffman* v. *Federal Laboratories, Inc.,* F. 2d , CCA 3rd, November 9, 1948, No. 9549.

Rep. 565; *National City Bank* v. *United States,* District Court of New York 1921, 275 F. 855, affirmed 281 F. 754, error dismissed 44 S. Ct. 32, 263 U. S. 726, 68 L. Ed. 527.

Thus, in *Monongahela Navigation Co.* v. *U. S., supra,* this court held that the question as to what is "just compensation" for private property taken for public use is a judicial, and not a legislative question; and the provision in the act authorizing the condemnation of a lock and dam belonging to the Monongahela Navigation Company, 25 Stat. p. 411 "that in estimating the sum to be paid by the United States the franchise of said corporation to take tolls shall not be considered or estimated," does not preclude the court from giving compensation for such franchise.

And again, in *United States* v. *New River Colleries Co., supra,* this court held that the ascertainment of compensation for property taken by the Government under Lever Act, Section 10, 40 Stat. 279, is a judicial function, and no power exists in any other department of the Government to declare what the compensation shall be, or to prescribe any binding rule in that regard.

The Court of Claims similarly points out that the determination of just compensation under the Fifth Amendment is exclusively a judicial function and it is for that court to fix the rate of interest it will allow for property taken by the Government. *Walker* v. *United States,* 105 Court of Claims 553 (1946) 64 F. Supp. 135; *Arkansas Valley Railway Inc.* v. *United States,* 107 Court of Claims 240, 68 F. Supp. 727, Cert. Denied 67 S. Ct. 1083.

See also *United States* v. *Certain Parcels of Land in the City of Baltimore, State of Maryland,* 55 F. Supp. 257, to the same effect.

The cases cited by the petitioner[4] for the proposition that the Court of Claims is bound by the limitations in statutes where the Government consents to be sued do not involve just compensation under the Fifth Amendment for property taken. They deal with claims against the Government where the Government is under no constitutional duty to provide a judicial remedy. Since it is under no duty to provide a judicial remedy it may impose conditions to its consent to be sued. *United States* v. *Sherwood,* 312 U. S. 584, 587, 61 S. Ct. 767, 770.

The court below correctly held that there was a taking by the Government of an interest in petitioner's patent as well as an incidental taking of petitioner's claim for accrued and unpaid royalties for which the statute provides a remedy by suit in the Court of Claims against the Government for the compensation required by the Fifth Amendment. Just compensation is due process.

B.

There is No Conflict Between the Decision Below and the Decisions of Other Circuits.

Cold Metal Process Co. v. *McLouth Steel Corp.,* 79 U. S. Patent Quarterly 222 (C. C. A. 6th) does not deal with royalties covered by the statute but the question there was whether the statute excused the payment of interest on royalties not covered by it. The court held that there was nothing in the statute to show its effect was retroactive so as to suspend payment of interest on royalties not affected by the statute. This is an essentially different question from that decided by the court below.

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[4] Brief, page 34.

Biggins v. *Oltmer Iron Works,* 154 F. 2d 214, C. C. A. 7th, 1946, dealt with the question of whether or not a partial summary judgment was appealable. The court below in this case does not deal with that question, but was of opinion that the so-called summary judgment should be regarded as an order limiting issues as at a pretrial conference, subject to revision by the court at the time of the entry of the final judgment, and was not *res adjudicata* binding upon the trial judge as to the balance of the claim.

Conclusion.

Writ of certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent.